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Attorneys for Defendants

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

AMTRUST BANK, et al.,  
 Plaintiff(s),

vs.

REX H. LEWIS, et al.,  
 Defendant(s).

)  
 ) **Case No. 2:10-cv-00439-HDM-LRL**  
 )  
 ) **OPPOSITION OF DEFENDANTS TO**  
 ) **FDIC MOTION TO STAY PENDING**  
 ) **THE EXHAUSTION OF**  
 ) **ADMINISTRATIVE REMEDIES**  
 )  
 )  
 )  
 )

Defendants, REX H. LEWIS, an individual; CORRALES PETERS LLC, an Arizona limited liability company; BARTLETT SUNRISE, LLC, an Arizona limited liability company; COTTONGIN, LLC, a Nevada limited liability company; MIDWAY CORNMAN, LLC, an Arizona limited liability company; PEBBLE CIMARRON LLC, a Nevada limited liability company; MESA VERDE INC., a Nevada corporation; JONAH LLC, a Nevada limited liability company; REGENA TEEPEE, LLC, a Nevada limited liability company, HH INV, LLC, a Nevada limited liability company; OMEGA VISTA, LLC, a Nevada limited liability company; ALPHA VISTA, LLC, a Nevada limited liability company, by and through their counsel of record, Leland Eugene Backus, Esq. of Backus • Carranza, do hereby respectfully submit their opposition to the motion to stay proceedings brought by the Federal Deposit Insurance

1 Corporation ("FDIC").

2 Although federal law on indicates the FDIC as receiver can request a stay of legal  
3 proceedings of up to 90 days, a similar motion seeking 180 days was brought in a related state  
4 court case currently pending in the Eighth Judicial District Court named *Iota Pumpkins, LLC v.*  
5 *Denali Mountains Edge, Inc., Alpha Vista, LLC, Rex H. Lewis, et al*, Case no. A593489. This  
6 motion was filed in that matter on February 10, 2010 and on March 15, 2010, the Honorable  
7 Kathleen E. Delaney in Department 25 only permitted the stay to be for a period of 90 days and  
8 not the requested 180 days requested.

9 The purpose of the stay is to permit the FDIC adequate time for exhaustion of  
10 administrative remedies. The failed bank for which FDIC is acting as a Receiver, AmTrust  
11 Bank was closed by the Office of Thrift Supervision on December 4, 2009. A claims process  
12 was set up by the FDIC and the bar date or last date on which a claim could be made for this  
13 failed banking institution was March 10, 2010. Accordingly, not even a stay for 90 days is  
14 warranted at this late juncture. To be consistent with the state court stay, a current stay of 55  
15 days would be indicated.

16 According to the FDIC Resolutions Handbook, Chapter 7, "[i]mmediately after its  
17 appointment, the FDIC as receiver must notify the failed institution's creditors ... to submit  
18 their claims to the receiver." This was done and the Defendants have each submitted timely  
19 claims to the FDIC office in Jacksonville and prior to the bar date.

20 Defendants note that the moving papers only attach exhibits referencing AmTrust Bank  
21 as the failed institution for which the Federal Deposit Insurance Corporation (FDIC) has been  
22 statutorily appointed Receiver. No documentation is presented showing the interrelationship of  
23 Iota Violet, LLC, Iota Coral, LLC, Iota Jade, LLC, Iota Cinnamon, LLC, Iota Red, LLC or Iota  
24 Royal, LLC to AmTrust Bank. The corporate filings of each of these Iota Entities demonstrate

1 that another entity AmTrust Financial Services, Inc. is the Managing Member of each said  
 2 entity. [See Exhibit A]. AmTrust Financial Services, Inc. is not related or affiliated with  
 3 AmTrust Bank. The FDIC has not intervened or sought substitution for these Iota Entities.

4 If plaintiffs were to disclose their Fed.R.Civ.P. documents and such demonstrated that  
 5 any of these entities were subsidiaries of AmTrust Bank and as such potentially “Acquired  
 6 Subsidiaries” subject to the Purchase and Assumption Agreement Whole Bank/All Deposits  
 7 Among Federal Deposit Insurance Corporation, Receiver of AmTrust Bank, Cleveland, Ohio,  
 8 Federal Deposit Insurance Corporation and New York Community Bank Dated as of December  
 9 4, 2009 (hereinafter “Assuming Bank Purchase Agreement”), then another party may need to be  
 10 brought into this action. [See Exhibit B]. Under the Assuming Bank Purchase Agreement, New  
 11 York Community Bank (“Assuming Bank”) purchased certain assets and assume certain  
 12 liabilities of AmTrust Bank, the failed institution. “Acquired Subsidiaries” is defined by the  
 13 Assuming Bank Purchase Agreement to mean “Subsidiaries of the Failed Bank acquired  
 14 pursuant to Section 3.1.” [See Exhibit B, Article I, Definitions.] Under Section 3.1, the  
 15 Assuming Bank acquired “all right, title, and interest of the Receiver in and to all of the assets  
 16 (real, personal and mixed, wherever located and however acquired) of the Failed Bank ....”  
 17 Under Section 2.1(m), the Assuming Bank assumed “all asset-related offensive litigation  
 18 liabilities and all asset-related defensive litigation liabilities ....” Under this Assuming Bank  
 19 Purchase Agreement, it may very well be that the FDIC no longer owns the assets or liabilities  
 20 which are the subject of this action and that New York Community Bank should be the real  
 21 party in interest. Upon such a finding, then the motion should be denied, since the FDIC is not a  
 22 proper party and the Assuming Bank has not been substituted in nor has it sought a stay. If  
 23 these are not acquired assets and assumed liabilities, then the motion can be granted.

24 Finally, this Court should be made aware that in the related state court proceeding, the

1 Discovery Commissioner required that AmTrust Bank disclose its insurance information. Thus  
2 Defendants further object to any stay being entered without a full disclosure of insurance  
3 policies for AmTrust Bank, the other Plaintiffs, the Iota Entities, and the officers and directors  
4 of each. The FDIC should provide to Defendants the required insurance initial disclosures  
5 under Fed.R.Civ.P. 26(a0, including any insurance agreement under which any person carrying  
6 on an insurance business may be liable to satisfy part or all of a judgment which may be entered  
7 in the action or to indemnify or reimburse for payments made to satisfy the judgment and any  
8 disclaimer or limitation of coverage or reservation of rights under any such insurance  
9 agreement.

10 DATED this 19 day of April, 2010.

11 Respectfully Submitted,

12 **BACKUS • CARRANZA**

13 By: 

14 Leland Eugene Backus, Esq.

15 3050 South Durango Drive

16 Las Vegas, NV 89117

17 Attorneys for Defendants

**CERTIFICATE OF SERVICE**

In accordance with Civ. R. 5 and LR 5, on April 21, 2010, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

**VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

**VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

**BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

**BY E-MAIL:** by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

**BY CM/ECF SYSTEM:** by transmitting via the United States District Court's CM/ECF System to the following individuals for which such service is designated on the Service List.

SERVICE LIST

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
Eleissa C. LaVelle, Esq. DUANE MORRIS LLP 100 N. City Parkway, Suite 1560 Las Vegas, NV 89106-4617	Plaintiff	<input checked="" type="checkbox"/> CM/ECF service <input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input type="checkbox"/> Mail service

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
 An employee of BACKUS • CARRANZA

# Exhibit A



10/12/2009

Arizona Corporation Commission  
State of Arizona Public Access System

1:49 PM

**Jump To...**Scanned Documents**Corporate Inquiry****File Number:** L-1536774-5**Check Corporate Status****Corp. Name:** IOTA VIOLET, LLC**Domestic Address**

6900 E CAMELBACK RD #200

SCOTTSDALE, AZ 85251

**Statutory Agent Information****Agent Name:** GAMMAGE & BURNHAM PLC**Agent Mailing/Physical Address:**

TWO N CENTRAL AVE 18TH FL

PHOENIX, AZ 85004

**Agent Status:** APPOINTED 07/02/2009**Agent Last Updated:** 07/17/2009**Additional Corporate Information****Corporation Type:** DOMESTIC L.L.C.**Business Type:****Incorporation Date:** 07/02/2009**Corporate Life Period:** PERPETUAL**Domicile:** ARIZONA**County:** MARICOPA**Approval Date:** 07/17/2009**Original Publish Date:****Member Information**AM TRUST FINANCIAL SERVICES IN  
MEMBER

200 AM TRUST BANK CTR

181 E 9TH ST

CLEVELAND, OH 44114

**Date of Taking Office:** 07/02/2009



Last Updated: 07/17/2009

**Scanned Documents**

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Document Number	Description	Date Received
02848590	ARTICLES OF ORGANIZATION	07/13/2009

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10/12/2009

Arizona Corporation Commission  
State of Arizona Public Access System

1:50 PM

**Jump To...**Scanned Documents**Corporate Inquiry****File Number:** L-1522749-5[Check Corporate Status](#)**Corp. Name:** IOTA CORAL, LLC**Domestic Address**

6900 EAST CAMELBACK RD STE 200

SCOTTSDALE, AZ 85251

**Statutory Agent Information****Agent Name:** KYLE S HIRSCH**Agent Mailing/Physical Address:**

%BRYAN CAVE LLP

TWO NORTH CENTRAL AVE STE 2200

PHOENIX, AZ 85004

**Agent Status:** APPOINTED 04/29/2009**Agent Last Updated:** 07/27/2009**Additional Corporate Information****Corporation Type:** DOMESTIC L.L.C.**Business Type:****Incorporation Date:** 04/29/2009**Corporate Life Period:** PERPETUAL**Domicile:** ARIZONA**County:** MARICOPA**Approval Date:** 05/05/2009**Original Publish Date:** 06/01/2009**Member Information**AMTRUST FINANCIAL SERVICES INC  
MEMBER  
%MITCHELL COHEN  
1801 E 9TH STREET STE 200  
CLEVELAND, OH 44114

Date of Taking Office: 04/29/2009  
Last Updated: 05/05/2009

### Scanned Documents

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02764109	ARTICLES OF ORGANIZATION	04/29/2009
02800925	PUB OF ARTICLES OF ORGANIZATION	06/01/2009

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## IOTA JADE, LLC

<b>Business Entity Information</b>			
Status:	Active	File Date:	5/7/2009 11:00:55 AM
Type:	Domestic Limited-Liability Company	Corp Number:	E0245522009-0
Qualifying State:	NV	List of Officers Due:	5/31/2010
Managed By:	Managing Members	Expiration Date:	

<b>Registered Agent Information</b>			
Name:	ELEISSA C. LAVELLE, ESQ.	Address 1:	3993 HOWARD HUGHES PKWY STE 400
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89169
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

<b>Financial Information</b>			
No Par Share Count:	0	Capital Amount:	\$ 0
<b>No stock records found for this company</b>			

<b>Officers</b>				<input type="checkbox"/> Include Inactive Officers
<b>Managing Member - AMTRUST FINANCIAL SERVICES, INC.</b>				
Address 1:	1801 E. NINTH STREET	Address 2:	SUITE 200	
City:	CLEVELAND	State:	OH	
Zip Code:	44114	Country:	USA	
Status:	Active	Email:		

<b>Actions\Amendments</b>			
Action Type:	Articles of Organization		
Document Number:	20090397579-71	# of Pages:	2
File Date:	05/07/2009	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	20090526801-33	# of Pages:	1
File Date:	07/06/2009	Effective Date:	
(No notes for this action)			

# IOTA CINNAMON, LLC

## Business Entity Information

Status:	Active	File Date:	5/7/2009 11:00:55 AM
Type:	Domestic Limited-Liability Company	Corp Number:	E0245542009-2
Qualifying State:	NV	List of Officers Due:	5/31/2010
Managed By:	Managing Members	Expiration Date:	

## Registered Agent Information

Name:	ELEISSA C. LAVELLE, ESQ.	Address 1:	3993 HOWARD HUGHES PKWY STE 400
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89169
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

## Financial Information

No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

## Officers

☐ Include Inactive Officers

### Managing Member - AMTRUST FINANCIAL SERVICES, INC.

Address 1:	1801 E. NINTH STREET	Address 2:	SUITE 200
City:	CLEVELAND	State:	OH
Zip Code:	44114	Country:	USA
Status:	Active	Email:	

## Actions\Amendments

Action Type:	Articles of Organization		
Document Number:	20090397602-78	# of Pages:	2
File Date:	05/07/2009	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	20090526799-89	# of Pages:	1
File Date:	07/06/2009	Effective Date:	
(No notes for this action)			

# IOTA RED, LLC

Business Entity Information			
Status:	Active	File Date:	10/27/2008 1:40:51 PM
Type:	Domestic Limited-Liability Company	Corp Number:	E0666512008-7
Qualifying State:	NV	List of Officers Due:	10/31/2009
Managed By:	Managers	Expiration Date:	

Registered Agent Information			
Name:	ELEISSA C. LAVELLE, ESQ.	Address 1:	3993 HOWARD HUGHES PKWY STE 400
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89169
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

Officers		<input type="checkbox"/> Include Inactive Officers	
Managing Member - AMTRUST FINANCIAL SERVICES, INC.			
Address 1:	1801 E. NINTH STREET	Address 2:	SUITE 200
City:	CLEVELAND	State:	OH
Zip Code:	44114	Country:	USA
Status:	Active	Email:	

Actions\Amendments			
Action Type:	Articles of Organization		
Document Number:	20080704516-33	# of Pages:	2
File Date:	10/27/2008	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	20090243161-88	# of Pages:	1
File Date:	03/13/2009	Effective Date:	
(No notes for this action)			



# IOTA ROYAL, LLC

Business Entity Information			
Status:	Default	File Date:	7/23/2009 2:30:17 PM
Type:	Domestic Limited-Liability Company	Corp Number:	E0394152009-5
Qualifying State:	NV	List of Officers Due:	8/31/2009
Managed By:	Managing Members	Expiration Date:	

Registered Agent Information			
Name:	ELEISSA C. LAVELLE, ESQ.	Address 1:	3993 HOWARD HUGHES PKWY STE 400
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89169
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

Officers		<input type="checkbox"/> Include Inactive Officers
No active officers found for this company		

Actions\Amendments			
Action Type:	Articles of Organization		
Document Number:	20090569317-62	# of Pages:	2
File Date:	07/23/2009	Effective Date:	
(No notes for this action)			